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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,885	09/19/2000	Richard Rubin	4138-A1	5127

7590

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EXAMINER

GARBE, STEPHEN P

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

NK

# Office Action Summary

Application No.

09/664,885

Applicant(s)

RUBIN, RICHARD

Examiner

Stephen Garbe

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Art Unit: 3727

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "constructed to define," "formed to provide," "formed to produce," "constructed to provide," and "constructed to inhibit" render these claims indefinite because it cannot be determined what structural feature or features, if any, these phrases require.

3. Claims 2-7 and 9-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are indefinite for the same reasons as their parent claims because they include all of the limitations of their parent claims.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4, 8-10, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attaway, U.S. Patent No. 5,775,530 in view of either Stewart, United States Patent No. 5,692,660 or Goryl, United States Patent No. 5,967,390. Each of Stewart and Goryl disclose containers having a layer of waterproof nylon plastic material. It would have been obvious to one of ordinary skill in the art at the time the

Art Unit: 3727

invention was made to make Attaway's nylon layers waterproof, as taught by either Stewart or Goryl, because waterproof material would have prevented the contents of Attaway's container from getting wet and rusting. The statements of function and intended use do not impart any structure to the claimed apparatus that is not disclosed by Attaway. Furthermore, claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original)

6. Claims 5-7, 11-13, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attaway, U.S. Patent No. 5,775,530 in view of either Stewart, United States Patent No. 5,692,660 or Goryl, United States Patent No. 5,967,390 and further in view of Anderson et al., U.S. Patent No 4,919,300. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Attaway's apparatus with hook and loop closure elements, as taught by Anderson et al. in Figure 5 (see col. 2, line 66-col. 3, line 1), because they would provide an additional measure of security to Attaway's container. Regarding the claims that require the closure elements to be supported by the lips, it is submitted that Anderson teaches this. Alternatively, the particular location would have been an obvious matter of choice.

7. Claims 5-7, 11-13, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attaway, U.S. Patent No. 5,775,530 in view of Anderson et al., U.S. Patent No 4,919,300. It would have been obvious to one of ordinary skill in the art at

the time the invention was made to provide Attaway's apparatus with hook and loop closure elements, as taught by Anderson et al. in Figure 5 (see col. 2, line 66-col. 3, line 1), because they would provide an additional measure of security to Attaway's container. Regarding the claims that require the closure elements to be supported by the lips, it is submitted that Anderson teaches this. Alternatively, the particular location would have been an obvious matter of choice.

8. Applicant's arguments filed with the reply have been fully considered but they are not persuasive. The arguments regarding the "102" rejections are moot because the claims are no longer being rejected on that basis. The non-analogous art rejection is not persuasive because Stewart and Goryl were cited only for the teaching that a nylon layer can be used for water resistance. This is a broad teaching that can be applied to the Attaway container. The argument that Attaway is non-analogous is not persuasive because, except for a specific teaching of waterproofness, Attaway discloses all structure required by these claims. Attaway does not need a disclosure that it can be used for food because the claims do not require food nor do they require any structural feature specifically adapting it for food that is not shown by Attaway. The waterproofness is not a feature specifically adapted for food because containers for holding a wide variety of items are routinely made waterproof to keep the contents dry. The remainder of the arguments are not persuasive because they rely on function only and do not point out any structural feature not shown by Attaway.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this application or proceeding should be directed to Stephen Garbe who can be reached at 703-308-1207. The examiner can normally be reached Monday-Thursday between the hours of 7:15 and 4:45 and alternate Fridays between the hours of 7:15 and 3:45.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on 703-308-2572.

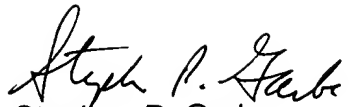
12. The fax phone numbers for Technology Center 3700 are 703-872-9302 for papers filed in response to a non-final Office Action and 703-872-9303 for papers filed in response to a Final Office Action.

13. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-1148.

Application/Control Number: 09/664,885

Art Unit: 3727

Page 6

  
Stephen P. Garbe  
Primary Examiner  
Group 3720